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C O N F I D E N T I A L CARACAS 003431

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TAGS: PHUM KJUS VE

SUBJECT: VENEZUELA JUDICIAL UPDATE: CASES DISMISSED, NEW INVESTIGATIONS

REF: CARACAS 03219

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d)

Summary

11. (C) A Caracas Appeals Court overturned the conviction of National Guard Gen. Carlos Alfonzo Martinez on November 1 on grounds that the actions alleged by the prosecutor did not constitute a crime under Venezuela's Penal Code. The same court, citing similar grounds, dismissed the charges against Baruta Mayor Henrique Capriles on October 18. Prosecutor Danilo Anderson announced November 4 that he would open an investigation of former Mayor of Greater Caracas Alfredo Pena and the capital's two highest ranking police officials for murder in relation to the events of April 11, 2002. Prosecutors also began investigating corruption allegations against Pena October 27. Anderson has opened investigations against 28 persons, alleging civil rebellion in relation to the Carmona decree issued on April 12, 2002. On November 1 a military prosecutor suspended his investigation of the journalist Patricia Poleo for releasing a video allegedly of Cubans at a military base. End Summary.

Capriles and Alfonzo Martinez Cases Thrown Out

12. (U) The Second Appeals Court overturned the conviction of Gen. Carlos Alfonzo Martinez for violating security zones on November 1, on the grounds that the act allegedly committed by the general -- giving a speech to opposition demonstrators in front of National Guard headquarters -- is protected by the constitution and international treaties under freedom of speech. The same Court threw out charges against Baruta Mayor Henrique Capriles on October 18, ruling that the events which the prosecution alleged took place were not criminal acts under the Penal Code. The Court released Capriles from the restrictions he was under as conditions of bail. In both cases the prosecution said it would appeal, but no action has been taken. On November 3 Judicial Inspectors visited the appeals court to investigate how the Alfonzo Martinez decision was leaked to the press.

13. (C) Appeals Court Judge Jesus Ollarves, who wrote both decisions, told PolOff October 23 that the prosecutions were clearly political. He said they were brought forward by a group of prosecutors who were willing to follow orders, with no regard to the facts, or the law. Ollarves said he was afraid the two cases had been assigned to his Court to prepare the ground for an attempt to remove him from the judiciary, though witnesses told him they saw no signs of tampering in the assignment of the case. Ollarves is a tenured judge, making it more difficult to remove him. Ollarves has ruled against prosecutors in allegedly political cases in the past, including the decision to free opposition leader Carlos Melo, after he was arrested during the disturbances in February-March of 2004. Ollarves told PolOff that he received threats after the Melo decision, and took several months vacation. In an e-mail communication on November 5, Ollarves called the judicial inspection an "intimidatory process."

Anderson Goes After Pena

14. (C) On November 4 Prosecutor Danilo Anderson told reporters he had opened an investigation against Greater Caracas Mayor Alfredo Pena, the Metropolitan Secretary for Security Henry Vivas, and the Chief of the Metropolitan Police, Lazaro Forero, as the intellectual authors of the violence on April 11, 2002. Vivas was chief of the Metropolitan Police at the time, and Forero his deputy. The eight Metropolitan Police officers who have been in custody for eleven months charged with the deaths that occurred in April 2002 have begun to negotiate with Anderson, offering to cooperate in the investigation. Prosecutors also opened an

investigation against Pena on October 27 for corruption, after he withdrew from mayor's race. Pena is presently in the U.S.

While Continuing Carmona Investigation

15. (U) Anderson has also opened investigations for civil rebellion against 28 persons of the 400 he expects to prosecute for their alleged participation in the proclamation of the Carmona Decree (see reftel), and has announced his intention to begin calling eight persons a day to be informed of the investigation to speed up the process. Anderson told reporters on November 4 that he did not intend to pursue an investigation against reelected Zulia Gov. Manuel Rosales for the moment, because it would require special permission from the Supreme Court and the National Assembly.

Poleo Investigation Closed

16. (U) Military Prosecutor General Eladio Aponte Aponte November 1 suspended the investigation of journalist Patricia Poleo in relation to her release of a video purporting to show Cubans in Venezuela's main military base, Fuerte Tiuna. The action releases Poleo from court-imposed travel restrictions.

Comment

17. (C) The 2nd Chamber of the Caracas Appeals Court is the only Chamber left which is not dominated by allies of the GOV. It is by no means certain that the government will not continue to pursue them by appealing to the Supreme Court, at least in the case of Gen. Alfonzo given his interest in participating in politics now that he is free. With the case against the NGO Sumate also in suspense, the Pena case and the Carmona investigation, which aim to establish the Chavista perspective on the April 2002 events and to fix blame, appear to be the GOV's priority now.
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